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COLLIS P. HUNTINGTON *v.* ELIZABETH C. ATTRILL.[1] SUPREME COURT OF UNITED STATES.

Corporation—Statutory Liability for a False Certificate—What Laws are Penal in the International Sense.

The statute of New York, making the officers of a corporation who sign and record a false certificate of the amount of its capital stock civilly liable to its creditors for all its debts, is not a penal law in the sense that it cannot be enforced in a foreign State or country.

Laws are penal in the international sense only when imposing punishment for an offense committed against the State or public of a nature criminal or quasi-criminal, not where the wrong and redress provided is to the individual and the remedy civil.

The refusal of the courts of one State to enforce a judgment of another State, not penal in the international sense, denies to the judgment the full faith, credit and effect to which it is entitled under the Constitution and laws of the United States. It, therefore, raises a Federal question, and such refusal may be reversed by the Supreme Court of the United States on writ of error.

Opinion by GRAY, J.

THE NATURE AND ENFORCEABILITY IN A FOREIGN JURISDICTION OF THE INDIVIDUAL STATUTORY LIABILITY FOR CORPORATE DEBTS OF CORPORATE OFFICERS, DIRECTORS, OR TRUSTEES, ATTACHING UPON BREACH OF CERTAIN STATUTORY DUTIES.

The importance of this recent deliverance of our highest Federal court is, in its plain limitation of the meaning of the word penal in the international sense to crimes and misdemeanors and such other suits for penalties, quasi-criminal, as may be instituted in the name or in favor and for the protection of the State or public. The decision disposes, so far as the Federal jurisdiction goes, of any prior uncertainty as to the subject-matter of this note, and squarely overrules several State decisions, and the rule laid down in the text-books founded thereon, wherever the liability has merged in a judgment of the foreign State. In other words, to all *judgments* for tort, as well as

[1] Reported in 146 U. S., 657.

contract, and whether the liability be statutory or at common law, there is now extended the provisions of Art. 4, § 1 of the Federal Constitution and the Act of May 26, 1790 (Rev. Stat., § 905), defining and enforcing the same; and the refusal of any State court to give 'such faith and credit' to such judgments of other States 'as they had by law or usage in the courts of the State of which they are taken,' is made a ground for removal or appeal to the Federal court. It is expressly held, however, that the Federal jurisdiction does not extend to the refusal of one State to entertain a suit upon the *original liability* as existing in the other State, and the reason given is because 'the Constitution and laws of the United States have not authorized its (the State's) decision upon such a question to be reviewed by this court;' but only where the original liability (not penal in the international sense) 'has passed into judgment' in the other State, in which case only does the refusal to enforce the liability confer jurisdiction upon the Federal court. On the other hand, it is held that 'the essential nature and real foundation of a cause of action are not changed by recovering judgment upon it' where the question is 'whether the claim is really one of such a nature that the court is authorized to enforce it;' and, therefore, where the liability is penal in the international sense, the fact that it has merged in a judgment of the other State does not confer jurisdiction; that every court must determine the nature of the liability for itself.

Prior State Decisions on the Subject.—Proceedings in another State upon the foreign liability must be either upon the original cause of action or upon a foreign judgment already had thereon and certified over to the new forum for recognition and enforcement under the Constitution and Act of Congress aforesaid. Derrickson *v.* Smith, 27 N. J., 166; Halsey *v.* McLean, 94 Mass. (12 Allen), 438, and Plymouth First Nat. Bank *v.* Price, 33 Md., 487, referred to by the learned justice in the principal case, were actions upon the original liability; while Spencer *v.* Brockway, 1 Ohio, 259; Healy *v.* Root, 11 Pick., 389, and Indiana *v.* Helmer, 21 Iowa, 370, referred to by the same justice in Wisconsin *v.* Pelican Ins. Co., *infra*, were upon judgments already obtained.

By reference first to the three cases first above mentioned we may see the position hitherto taken by certain state tribunals where the question has arisen unencumbered by the suggestion of a violation of the Federal mandate as to the records and judgments of other States. Mr. Justice GRAY, in the principal case, disposes of all three cases as follows: "It is true that the courts of some States . . . have declined to enforce a similar liability imposed by the statute of another State. But in each of these cases it appears to have been assumed to be a sufficient ground for that conclusion that the liability was not founded in contract, but was in the nature of a penalty imposed by statute; and no reasons were given for considering the statute a penal law in the strict, primary and international sense."

In Derrickson *v.* Smith; *supra*, the plaintiff sued at law in New Jersey a trustee of a New York corporation for goods sold and

delivered to the corporation, setting out a violation by said trustee of a certain New York Act making it the duty of the president and a majority of the trustees of the corporation, within twenty days of the first day of January of each year, to make, publish and file a sworn report as to the capital and indebtedness of the corporation, under penalty of becoming jointly and severally liable for all debts of the corporation existing or contracted before such report made. It is well settled that a *stockholder's* statutory liability for the debts of the corporation is upon an implied contract voluntarily assumed upon the acquisition of the stock, whether by subscription or subsequent purchase: Hathorn *v.* Calef, 69 U. S., 10; Carrol *v.* Green, 92 U. S., 509; Flash *v.* Conn, 109 U. S., 371; and counsel for plaintiff in Derrickson *v.* Smith, *supra*, while conceding that, as a general proposition, penal laws are strictly local, contended that under said New York Act, the implication of contract was as justifiable in the case of the liability imposed upon a delinquent trustee' as in the case of that imposed upon the stockholders by another section of the same Act. The court, however, was unable to see any analogy between the implied agreement of the stockholder to the terms of his charter, of which the statutory liability to corporate creditors must be considered as a part, and the penalty imposed upon the trustee for breach of a subsequent statutory duty. The court was disposed rather to adopt the reasoning of the New York cases cited, that corporations whose stockholders are made liable for corporate debts are vested with but a qualified corporate capacity, and the stockholders left, without personal exemption or immunity, to their original and primary liability as partners and original parties to the debts; that on the other hand the liability of the delinquent trustee arose, not out of the contract made by the corporation, nor from his acceptance of his office, but solely from his subsequent wrongful neglect, ELMER, J., saying: "This neglect is in the nature of a *tort*, and the consequent liability is the penalty which they are to pay. It is altogether different from the original liability of a partner, and in my judgment cannot, by any fair reasoning, be brought within the terms of the original contract. . . . The liability . . . is . . . created by statute, and never existed until the neglect occurred which entitled the creditors to claim it. The original indebtedness was that of the corporation and of the stockholders to the extent of their stock. The trustees, by neglecting to report, were made liable by way of punishment for an offense." VREDENBURG, J., said: "When the debt was contracted the defendants were not liable, but only the corporation. The goods were not sold on the credit of the defendants, but only on that of the corporation; the plaintiffs cannot say that they sold the goods . . . upon any contract, express or implied, with the trustees, that at some time afterward they, the trustees, would or might neglect to advertise; they trusted, and had a right to trust, the corporation upon no such speculation. If the defendants have become liable, it is not because of any contract between them and the plaintiffs, but because long afterward they neglected to do

something they were commanded to do by the statute. If they became liable at all, it was not by way of contract, but by way of penalty. The statute says that the trustees shall advertise, and that if they do not they shall pay, not all their own debts, but all the debts of the corporation. The statute is clearly and purely penal . . . it is clear it cannot be enforced in this State."

In Halsey *v.* McLean, *supra*, the Massachusetts court refused to enforced the same New York Act against a New York trustee in Massachusetts, on the ground that "penal laws will be allowed no extra-territorial operation," and the construction in this respect of the New York courts of their own Act was conclusive.

In First National Bank of Plymouth *v.* Price, *supra*, the Maryland courts declined to enforce a Pennsylvania Act, imposing a joint and several liability upon officers and directors of certain corporations for corporate debts contracted in excess of the capital paid in, BARTOL, C. J., saying: "while a contract made in one State is enforced in other States agreeably to the law of the State where it is made, it is well settled that no State will enforce penalties imposed by the laws of other States; such laws are universally considered as having no extra-territorial operation." Derrickson *v.* Smith and Halsey *v.* McLean, *supra*, were cited and approved, and the learned judge concluded his opinion as follows: "This liability does not arise upon any contract to which the directors are parties; but is altogether statutory imposed on them as wrongdoers, and in its nature penal, and as such can only be enforced within the State where the statute operates."

In Wisconsin *v.* Pelican Ins. Co., *infra*, Mr. Justice GRAY was arguing *against* the enforceability of the foreign liability there presented, although already merged in judgment, and Spencer *v.* Brockway, Healy *v.* Root and Indiana *v.* Helmer, *supra*, all three cases being upon foreign judgments, were cited to sustain the enforceability of such foreign liabilities, at least when so merged. The learned, justice, however, after first holding that 'the essential nature and real foundation of a cause of action are not changed by recovering judgment upon it,' where the question of jurisdiction must be determined, dismisses these cases as follows: "The decision in each of these cases appears to have been mainly upon the supposed effect of the provisions of the Constitution and the Act of Congress as to the faith and credit due to a judgment rendered in another State which had not then received a full exposition from this Court; and the other reasons assigned are not such as to induce us to accept those decisions as satisfactory precedents to guide our judgment in the present case."

In Spencer *v.* Brockway the plaintiff brought suit in Ohio, describing himself as the treasurer of the State of Connecticut and reciting judgments recovered by his predecessor in the office upon two forfeited recognizances taken in consequence of an alleged violation of the penal laws of Connecticut, and all the Court said in answer to the defendant's second point, that 'the courts of one State will not enforce the penal laws of a sister State,' was, 'The suit is for the re-

covery of a sum of money. It is founded on judgments obtained in . . . . the State of Connecticut, and not on the penal laws of that State. The objection, therefore, cannot be sustained.

In Healy *v.* Root the plaintiff sued in Massachusetts upon a judgment had in Pennsylvania in a *qui tam* action on a penal statute for usury, providing that one-half of the amount recovered should go to the State and the remaining half to plaintiff. The point was expressly made that 'the original cause of action being *qui tam* for a penalty, wherein the commonwealth of Pennsylvania was interested, could not have been sued and enforced here, and so a judgment rendered there upon such a cause will not be enforced here;' but the Court could not perceive the force of the argument because, 'after the plaintiff had by a verdict and judgment reduced his damages to a certainty, the original cause of action would be merged in the judgment,' and held that, as the foreign record showed jurisdiction of the cause and of the parties, it must be held conclusive.

In Indiana *v.* Helmer the State of Indiana sued, in Iowa, upon a judgment recovered in Indiana for the support of a bastard, and COLE, J., said: "It is claimed that the subject matter of the action is one of merely local police regulation in the State of Indiana, under its laws, and that it is not competent for the courts of another State to undertake its enforcement. There is much truth in the legal proposition . . . but the error is in its application. If the mother . . . . had come to Iowa and sought by legal proceedings to compel the defendant, its father, to support it and to give bond therefor, and otherwise to comply with the requirements of the statutes of Indiana, the answer of the defendant that the subject matter of such action was one of merely local police regulation of Indiana, not enforceable in this State, would have been conclusive and amount to a complete defense: Graham *v.* Monsugh, 22 Vermont, 543. Such an action can no more be sustained beyond the limits of the sovereignty within which it arose than can an action for any other penalty provided by statute of such sovereignty for the wrongful act of a defendant therein. Both are alike matters of local, internal police and enforceable alone by the sovereignty making the regulation and providing the penalty. But when the local jurisdiction has attached, and the courts of that State or sovereignty have properly taken cognizance of the matter and rendered judgment for such penalty, such judgment is entitled to 'full faith and credit' in every other State. If the court rendering the judgment had jurisdiction of the subject matter and of the parties, it is sufficient to entitle the plaintiff therein to maintain an action thereon in another State. And the courts of such other State will not inquire into the facts upon which it was based, nor whether the cause of action would have been enforced by them: Healy *v.* Root, 11 Pick., 389; Connecticut *v.* Bradish, 14 Mass., 296."

But, said Mr. Justice GRAY, in Wisconsin *v.* Pelican Ins. Co., *infra* (reasserting it in Huntington *v.* Attrill): "The application of the rule ['the courts of no country execute the penal laws of another'] is not affected by the provisions of the Constitution and of the Act of

Congress, by which the judgments of the courts of any State are to have such faith and credit given to them in every court within the United States as they have by law or usage in the State in which they were rendered. Const., Art. IV, § 1; Act May 26, 1790, chap. 11, 1 Stat. at L., 122; Rev. Stat., § 905. These provisions establish a rule of evidence, rather than of jurisdiction. While they make the record of a judgment, rendered after due notice in one State, conclusive evidence in the courts of another State, or of the United States, of the matter adjudged, they do not affect the jurisdiction, either of the court in which the judgment is rendered, or of the court in which it is offered as evidence. . . . The essential nature and real foundation of a cause of action are not changed by recovering judgment upon it, and the technical rules, which regard the original claim as merged in the judgment, and the judgment as implying a promise by the defendant to pay it, do not preclude a court, to which a judgment is presented for affirmative action (while it cannot go behind the judgment for the purpose of examining into the validity of the claim), from ascertaining whether the claim is really one of such a nature that the court is authorized to enforce it: Louisiana *v.* New Orleans, 109 U. S., 285, 298, 281; Louisiana *v.* St. Martin's Parish, 111 U. S., 716; Chase *v.* Curtis, 113 U. S., 452, 464; Boynton *v.* Ball, 121 U. S., 457, 466."

This disposes, so far at least as the Federal courts are concerned, of state decisions, such as the last three above noticed, which have given efficacy to the foreign liability, clearly penal in the international sense, because of its having merged in judgment. The future influence, or authority of such state decisions as the first three, above noticed, which have refused to entertain proceedings upon original liabilities no longer penal, in the Federal view, as between the States, must remain to be seen. They are not within the Federal jurisdiction, as will hereinafter appear.

One or Two Prior Federal Decisions.—In Wisconsin *v.* Pelican Ins. Co., of New Orleans, 127 U. S., 265, the State of Wisconsin sued the defendant company in Louisiana, upon a judgment already had in Wisconsin, for non-compliance with certain provisions of a Wisconsin Act as to fire insurance companies doing business within that State. This Act provided that during the month of January of each year, all such companies should deposit with the state commissioner of insurance a sworn statement of the condition of the company's business and assets for the previous year, and imposed on any corporation, or officer thereof, failing so to do, or making any willfully false statement, a fine of $500, with an additional $500 for every month thereafter such company should continue to do business until such statement should be filed. By another Act, § 1, it was "made the duty of the commissioner of insurance to prosecute to final judgment, in the name of the State, or to compromise, settle or compound, every forfeiture incurred by an insurance corporation, by its failure to comply with, or for its violation of, any law of the State, of which he may be credibly informed;" and by § 2, "one-half of every sum collected, paid or received by virtue of § 1 of this act shall be paid into the state treasury, and the remainder shall

belong to the commissioner of insurance, who shall pay all expenses incurred in prosecuting all actions brought to enforce the payment of such forfeitures, both in and out of the State, and shall pay all expenses incident to the collection of such forfeitures." Mr. Justice GRAY, after observing that the constitutional and statutory provisions conferring original jurisdiction upon the Supreme Court of the United States in controversies between States, or between a State and citizens of another State, were not conclusive as to the nature of the controversies warranting the assumption of the jurisdiction, and in reviewing said provisions and the cases thereon, said: "By the law of England and the United States, the penal laws of a country do not reach beyond its own territory. . . . Chief Justice MARSHALL stated the rule . . . as an incontrovertible maxim: 'The courts of no country execute the penal laws of another:' *The Antelope*, 10 Wheat., 66, 123. . . . The rule . . . applies not only to prosecutions and sentences for crimes and misdemeanors, but to all suits in favor of the State for the recovery of pecuniary penalties for any violation of statutes for the protection of its revenue, or other municipal laws, and to all judgments for such penalties. If this were not so all that would be necessary to give ubiquitous effect to a penal law would be to put the claim for a penalty into the shape of a judgment. Whart. Confl. L., 1st Ed., § 833; Westlake, Internat. L., 1st Ed., § 388; Piggott, Foreign Judg., 209, 210. . . . 'But this [the duty to enforce foreign judgments or decrees for civil debts or damage] includes not a decree decerning for a penalty; because no court reckons itself bound to punish, or to concur in punishing, any delict committed *extra territorium*.' 2 Kameron Equity, 3d Ed., 326, 366; Story, Confl. L., §§ 600, 622." After a review of the cases in which the Supreme Court had assumed, or declined, jurisdiction, as aforesaid, for the purpose of showing the civil nature of the liabilities presented, as the condition of the assumption, and that parties alone do not confer jurisdiction in the case of 'a suit or prosecution by the one State of such a nature that it could not, on the settled principles of public and international law, be entertained by the judiciary of the other State,' even though upon a judgment already obtained (as already quoted); the learned justice continued: "The position that the jurisdiction conferred by the Constitution upon this court, in cases to which a State is party, is limited to controversies of a civi nature, does not depend upon mere inference from the want of any precedent to the contrary, but has express legislative and judicial sanction." The learned judge here quotes the language of the judiciary Act of September 24, 1789, Chap. § 20, 13, to wit: "The Supreme Court shall have exclusive jurisdiction of controversies of a civil nature, etc.;" and the language of Mr. Justice IREDELL, in Chisholm *v.* Georgia, 2 Dall., 419, "The Act of Congress more particularly mentions civil controversies, etc.;" and that of Chief Justice MARSHALL, in Cohens *v.* Virginia., 6 Wheat., 264, "The original jurisdiction refers . . . not to those cases in which an original suit might not be instituted in a federalcourt, . . . perhaps every case in which a State

is enforcing its penal laws;" and concludes his opinion as follows: "The statute of Wisconsin under which the State recovered in one of her own courts the judgment now and here sued on, was in the strictest sense a penal statute. . . . The cause of action was not any private injury, but solely the offence committed against the State by violating her law. The prosecution was in the name of the State, and the whole penalty, when recovered, would accrue to the State, and be paid, one-half into her treasury, and the other half to her insurance commissioner, who pays all expenses of prosecuting for and collecting such forfeitures: Wis. Stat., 1885, Chap. 395. The real nature of the case is not affected by the forms provided by the law of the State for the punishment of the offence. It is immaterial whether, by the law of Wisconsin, the prosecution must be by indictment or by action; or, whether under that law a judgment there obtained for the penalty might be enforced by execution, by *scire facias*, or by a new suit. In whatever form the State pursues her right to punish the offence against her sovereignty, every step in the proceeding tends to one end, the compelling the offender to pay a pecuniary fine by way of punishment for the offence. This court, therefore, cannot entertain an original action to compel the defendant to pay to the State of Wisconsin a sum of money in satisfaction of the judgment for that fine." The learned justice in the principal case states that Wisconsin *v.* Pelican Ins. Co., was much relied on in argument by both sides, and enough of it has been quoted for an understanding of this remark, and especially of just how matters stood immediately prior to the decision in Huntington *v.* Attrill.

Another case particularly referred to in the principal case was that of Dennick *v.* Central R. R. Co. of N. J., 103 U. S., 11. It thus figures in the principal case. Says the learned justice: "The question whether a statute of one State, which in some aspects may be called penal, is a penal law in the international sense, so that it cannot be enforced in the courts of another State, depends upon the question whether its purpose is to punish an offense against the public justice of the State, or to afford a private remedy to a person injured by the wrongful act. There could be no better illustration of this than the decision of this court in Dennick *v.* Central R. R. Co., of N.J., 103 U. S., 11. In that case it was held that, by virtue of a statute of New Jersey making a person or corporation whose wrongful act, neglect or default should cause the death of any person, liable to an action by his administrator for the benefit of his widow and next of kin, to recover damages for the pecuniary injury resulting to them from his death, such an action, where the neglect and the death took place in New Jersey, might, upon general principles of law, be maintained in a Circuit Court of the United States held in the State of New York by an administrator of the deceased appointed in that State. Mr. Justice MILLER, in delivering judgment, said: It can scarcely be contended that the act belongs to the class of criminal laws which can only be enforced by the courts of the State where the offense was committed, for it is, though a statutory remedy, a civil action to recover damages for a civil

injury. It is, indeed, a right dependent solely on the statute of the State; but when the act is done for which the law says the person shall be liable, and the action by which the remedy is to be enforced is a personal and not a real action, and is of that character which the law recognizes as transitory and not local, we cannot see why the defendant may not be held liable in any court to whose jurisdiction he can be subjected by personal process or by voluntary appearance, as was the case here. It is difficult to understand how the nature of the remedy, or the jurisdiction of the courts to enforce it, is in any manner dependent on the question whether it is a statutory right or a common law right. Wherever, by either the common law or the statute law of a State, a right of action has become fixed, and a legal liability incurred, that liability may be enforced and the right of action pursued in any court which has jurisdiction of such matters and can obtain jurisdiction of the parties. Dennick *v.* Central R. R. Co. of N. J., 103 U. S., 17, 18. That decision is important as establishing two points: (1) The court considered 'criminal laws,' that is to say, laws punishing crimes, as constituting the whole class of penal laws which cannot be enforced extra-territorially. (2) A statute of a State, manifestly intended to protect life, and to impose a new and extraordinary civil liability upon those causing death, by subjecting them to a private action for the pecuniary damages thereby resulting to the family of the deceased, might be enforced in a Circuit Court of the United States held in another State, without regard to the question whether a similar liability would have attached for a similar cause in that State."

In Huntington *v.* Attrill, the plaintiff had obtained judgment against Attrill in New York as a guilty director of the debtor corporation, and pursued him thereon in the State of Maryland (and elsewhere, *vide infra*). In his bill in equity in Maryland against defendant and his wife and daughters to set aside as fraudulent the transfer of certain stock in a Maryland company, and to charge that stock with the payment of said New York judgment, plaintiff averred, as the original ground of defendants' liability, the making and recording in New York of a false certificate in violation of a certain New York Act, providing that 'The directors of every such company, within thirty days after the payment of the last instalment of the capital stock, shall make a certificate stating the amount of the capital so paid in, which certificate shall be signed and sworn to by the president and a majority of the directors; and they shall, within the said thirty days, record the same in the office of the secretary of state, and of the county in which the principal business office of such corporation is situated,' and; "If any certificate or report made . . . shall be false in any material representation, all the officers who shall have signed the same shall be jointly and severally liable for all the debts of the corporation contracted while they are officers.' One of the daughters demurred to the bill on the ground that 'the plaintiff's claim was for the recovery of a penalty against Attrill arising under a statute of New York:" The circuit court of Baltimore city overruled the

demurrer, but the Maryland Court of Appeals reserved this ruling and dismissed the bill: Attrill *v.* Huntington, 70 Md., 191. The majority of the court below thought that, as the liability was for all the corporate debts, irrespective of whether the creditor had suffered any deception, or of the insolvency of the company, and unlimited, as it were, it was intended as a punishment, and, therefore, in view of prior decisions both of New York and Maryland, and that of the Supreme Court in Wisconsin *v.* Pellican Ins. Co., *supra*, could not be enforced beyond the limits of the State of New York.

Mr. Justice GRAY thus quotes the minority opinion, by STONE, J.: "'I look upon the principal point as a Federal question, and am governed in my views more by my understanding of the decisions of the Supreme Court of the United States than by the decisions of the state courts.' And he concluded thus: 'I think the Supreme Court, in 127 U. S., meant to confine the operation of the rule that no country will execute the penal laws of another to such laws as are properly classed as criminal. It is not very easy to give any brief definition of a criminal law. It may, perhaps, be enough to say that, in general, all breaches of duty that confer no rights upon an individual or person, and which the State alone can take cognizance of, are in their nature criminal, and that all such come within the rule. But laws which, while imposing a duty, at the same time confer a right upon the citizens to claim damages for its non-performance, are not criminal. If all the laws of the latter description are held penal in the sense of criminal, that clause in the Constitution which relates to records and judgments is of comparatively little value. There is a large and constantly increasing number of cases that in one sense may be termed penal, but can in no sense be classed as criminal. Examples of these may be found in suits for damages for negligence in causing death, for double damages for the injury to stock where railroads have neglected the state laws for fencing in their tracks and the liability of officers of corporations for the debts of the company by reason of their neglect of a plain duty imposed by statute. I cannot think that judgments on such claims are not within the protection given by the Constitution of the United States. I therefore think the order in this case should be affirmed." Mr. Justice GRAY then calls attention to the various shades of meaning given to the word penal, and says: "Penal laws, strictly and properly, are those imposing punishment for an offence committed against the State, and which, by the English and American constitutions, the executive of the State has the power to pardon. Statutes giving a private action against the wrongdoers are sometimes spoken of as penal in their nature, but in such cases it has been pointed out that neither the liability imposed nor the remedy given is strictly penal."

After further illustrating from numerous cases the different uses of the word penal and the remedial side of the many so-called penal laws, he continues: "The test whether a law is penal, in the strict and primary sense, is whether the wrong sought to be redressed is a wrong to the public, or a wrong to the individual, according to the

familiar classification of Blackstone. . . . Crimes and offences against the laws of any State can only be defined, prosecuted and pardoned by the sovereign authority of that State; and the authorities, legislative, executive or judicial, of other States take no action with regard to them except by way of extradition. . . . For the purposes of extra-territorial jurisdiction it may well be that actions by a common informer, called, as Blackstone says, 'popular actions, because they are given to the people in general,' to recover a penalty imposed by statute for an offense against the law, and which may be barred by a pardon granted before action brought, may stand on the same ground as suits brought for such a penalty in the name of the State or of its officers, because they are equally brought to enforce the criminal law of the State. . . . The question whether a statute . . . . is a penal law in the international sense . . . . depends upon the question whether its purpose is to punish an offense against the public justice of the State, or to afford a private remedy to a person injured by the wrongful act. . . . The provision of the statute of New York, now in question, . . . is in no sense a criminal or quasi-criminal law. The statute . . . takes pains to secure and maintain a proper corporate fund for the payment of the corporate debts . . . it makes the stockholders individually liable for the debts of the corporation until the capital stock is paid in and a certificate of the payment made by the officers; and makes the officers liable for any false and material representation in that certificate. The individual liability of the stockholders takes the place of a corporate fund, until that fund has been duly created; and the individual liability of the officers takes the place of the fund, in case their statement that it has been duly created is false. If the officers do not truly state and record the facts which exempt them from liability, they are made liable directly to every creditor of the company who, by reason of their wrongful acts, has not the security for the payment of his debt out of the corporate property, on which he had a right to rely. As the statute imposes a burdensome liability on the officers for their wrongful act, it may well be considered penal, in the sense that it should be strictly construed. But as it gives a civil remedy, at the private suit of the creditor only, and measured by the amount of his debt, it is as to him clearly remedial. To maintain such a suit is not to administer a punishment imposed upon an offender against the State, but simply to enforce a private right secured under its laws to an individual. We can see no just ground, on principle, for holding such a statute to be a penal law, in the sense that it cannot be enforced in a foreign state or country."

The learned justice proceeds further to review the New York cases, dismisses the New Jersey, Massachusetts and Maryland cases, as already noticed, and refers to the litigation against Attrill, in Canada, as follows: "The true limits of the international rule are well settled in the decision of the judicial committee of the Privy Council of England, upon an appeal from Canada, in an action brought by the present plaintiff against Attrill, in the province of

Ontario, upon the judgment to enforce which the present suit was brought. The Canadian judges . . . differed in opinion upon the question whether the statute of New York was a penal law which could not be enforced in another country, as well as upon the question whether the view taken by the courts of New York should be conclusive upon foreign courts, and finally gave judgment for the defendant. Huntington *v.* Attrill, 17 Ont. App., 245; 18 Ont. App., 136. In the Privy Council, Lord WATSON, speaking for Lord Chancellor HALSBURY and other judges, as well as for himself, delivered an opinion in favor of reversing the judgment below, and entering a decree for the appellant, upon the ground that the action was not, in the sense of international law, penal. . . . 'The rule' (of international law), said Lord WATSON, 'had its foundation in the well recognized principle that crimes, including in that term all breaches of public law punishable by pecuniary mulct or otherwise, at the instance of the state government, or of some one representing the public, were local in this sense, that they were only cognizable and punishable in the country where they were committed. Accordingly, no proceeding, even in the shape of a civil suit, which had for its object the enforcement by the State, whether directly or indirectly, of punishment imposed for such breaches by the *lex loci*, ought to be admitted in the courts of any other country. In its ordinary acceptation the word 'penal' might embrace penalties for infractions of general law which did not constitute offenses against the State; it might, for many legal purposes, be applied with perfect propriety to penalties created by contract; and it, therefore, when taken by itself, failed to mark that distinction between civil rights and criminal wrongs, which was the very essence of the international rule. . . . .

"A proceeding, in order to come within the scope of the rule, must be in the nature of a suit in favor of the State whose law had been infringed. All the provisions of municipal statutes for the regulation of trade and trading companies were presumably eeacted in the interest and for the benefit of the community at large; and persons who violated those provisions were, in a certain sense, offenders against the state law as well as against individuals who might be injured by their misconduct. But foreign tribunals did not regard those violations of statute law as offenses against the State, unless their vindication rested with the State itself or with the community which it represented. Penalties might be attached to them, but that circumstance would not bring them within the rule, except in cases where those penalties were recoverable at the instance of the State, or of an official duly authorized to prosecute on its behalf, or of a member of the public in the character of a common informer. An action by the latter was regarded as an *actio popularis* pursued, not in his individual interest, but in the interest of the whole community. . . . Their lordships could not assent to the proposition that, in considering whether the present action was penal in such sense as to oust their jurisdiction, the courts of Ontario were bound to pay absolute deference to any interpretation which

might have been put upon the statute . . . in the State of New York. They had to construe and apply an international rule, which was a matter of law entirely within the cognizance of the foreign court whose jurisdiction was invoked. . . . The court appealed to must determine for itself, in the first place, the substance of the right sought to be enforced, and, in the second place, whether its enforcement would, either directly or indirectly, involve the execution of the penal law of another State." [Law Rep. App. Cases, 1893, Part 2, page 150.] After expressing his approval of the foregoing, Mr. Justice GRAY continues: "In this country, the question of international law must be determined in the first instance by the court, State or national, in which the suit is brought. If the suit is brought in a circuit court of the United States, it is one of those questions of general jurisprudence which that court must decide for itself, uncontrolled by local decisions: Burgess *v.* Seligman, 107 U. S., 20, 33; Texas and P. R. Co. *v.* Cox, 145 U. S., 593, 605. . . . If a suit on the original liability under the statute of one State, is brought in the court of another State, the Constitution and laws of the United States have not authorized the decision upon such a question to be reviewed by this court: New York L. Ins. Co. *v.* Hendren, 92 U. S., 286; Roth *v.* Elhman, 107 U. S., 319. But if the original liability has passed into judgment in one State, the courts of another State, when asked to enforce it, are bound by the Constitution and laws of the United States to give full faith and credit to that judgment, and if they do not, their decision, . . . may be reviewed and reversed by this court on writ of error. The essential nature and real foundation of a cause of action, indeed, are not changed by recovering judgment upon it. . . . The difference is only in the appellate jurisdiction of this court in the one case or the other . . . this court in determining whether full faith and credit have been given to that judgment, must decide for itself the nature of the original liability." After some general reference to the provisions of the Constitution and and act of Congress as to judgments and records of other States, *supra*, the learned justice concludes: "These provisions . . . give no effect to judgments of a court which had no jurisdiction of the subject-matter or of the parties . . . they confer no new jurisdiction on the courts of any State; and therefore do not authorize them to take jurisdiction of a suit or prosecution of such a penal nature, that it cannot, on settled rules of public and international law, be entertained by the judiciary of any other State than that in which the penalty was incurred: Wisconsin *v.* Pelican Co., above cited. Nor . . . put the judgments of other States upon the footing of domestic judgments, to be enforced by execution. . . . But when duly pleaded and proved . . . they have the effect of being not merely *prima facie* evidence, but conclusive proof of the rights thereby adjudicated; and a refusal to give them the force and effect, in this respect, which they had in the State in which they were rendered, denies to the party a right secured to him by the Constitution and laws of the United States citing cases). The judgment . . . now in question, is not impugned for any want of jurisdiction. . . .

The statute under which that judgment was recovered was not . . . a penal law, in the international sense. The faith and credit, force and effect, which that judgment had by law and usage in New York was to be conclusive evidence of a direct civil liability from the individual defendant to the individual plaintiff for a certain sum of money, and a debt of record, on which an action would lie, as on any other civil judgment *inter parties*. The court of appeals of Maryland, therefore, in deciding this case against the plaintiff, upon the ground that the judgment was not one which it was bound in any manner to enforce, denied to the judgment the full faith credit and effect to which it was entitled under the Constitution and laws of the United States."

LAMAR and SHIRAS, JJ., were not on the bench and took no part in the decision. FULLER, C. J., dissented, chiefly on the ground that "It was for the Maryland court to determine whether such enforcement would . . . involve the execution of the penal laws of another State, and although it might have mistaken in the conclusion arrived at, such error does not give this court jurisdiction to review its judgment." The learned Chief Justice thought that 'full faith and credit were accorded to the judgment as matter of evidence' and that 'no Federal question was involved.'

It might be interesting to speculate upon the future attitude of the State courts, under different circumstances, in view of this important decision; but this note has already exceeded the customary limit in the effort to present the situation fully and clearly and in the language of the different courts.

A. U. BANNARD.

EDITORIAL NOTES.

BY W. D. L.

CIVIL LIBERTY AS WRITTEN IN THE CONSTITUTION.

II.

How Far Civil Liberty was Thought, Prior to 1816, to be Secured in Written Constitutions.

IN our editorial notes for August we tried to point out that the great constitutional questions which would attract the attention of courts, bar and laity for a considerable time, were not those concerning the proper division of